IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

OP.No. 15172 of 2000(F)

PETITIONER:

P.C. LEELA, AGED 55 YEARS, RESIDING IN KANNANAYAKAL HOUSE, PERINGODE, NAGALASSERY, OTTAPPALAM TALUK, PALGHAT DIST.

BY ADV. SRI.J.DEVADANAM

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT, TRIVANDRUM.

2. THE DISTRICT COLLECTOR, PALAKKAD.

3. THE TAHSILDAR, OTTAPPALAM.

4. THE ASST. COMMISSIONER (ASSESSMENT), SPECIAL CIRCLE, PALAKKAD.

ADDL 5. C.J. MATHEW, CHEUVATHOOR HOUSE, CHALISSERY P.O., OTTAPPALAM TALUK, PALAKKAD DIST.

ADDL. R5 IS IMPLEADED AS PER ORDER DATED 12.6.2000 IN CMP 26026 OF 2000

BY ADV. SMT.PREETHY KARUNAKARAN
R5 BY ADV. SRI.R.RAJESH KORMATH
SRI.ANISH S.AMBADY
SMT.BIJIMOL JOSE
R1 TO R4 BY GOVERNMENT PLEADER SRI. V. TEKCHAND.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 24672 OF 2000 IN OP 15172 OF 2000

DISMISSED

13.11.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE PROCEEDINGS OF THE DISTRICT COLLECTOR, PALAKKAD DATED 25.3.2000

EXT.P2 TRUE COPY OF THE ARREST WARRANT ISSUED BY THE DISTRICT COLLECTOR, PALAKKAD DATED 25.3.2000

EXT.P3 TRUE COPY OF THE ASSESSMENT ORDER OF THE ASST. COMMISSIONER OF INCOME TAX DATED 21.3.1995

EXT.P4 TRUE COPY OF THE ASSESSMENT ORDER OF THE ASSISTANT COMMISSIONER OF INCOME TAX DATED 16.3.1995

EXT.P5 TRUE COPY OF THE ASSESSMENT ORDER OF THE ASST. COMMISSIONER OF INCOME TAX DATED 28.3.1995

EXT.P6 TRUE COPY OF THE ORDER OF THE ASST. COMMISSIONER OF SALES TAX DATED 5.10.1996

EXT.P7 TRUE COPY OF THE DECLARATION ISSUED BY THE TAHSILDAR, OTTAPPALAM DATED 21.2.1995

EXT.P8 TRUE COPY OF PETITION FILED BY K.U. VARGHESE BEFORE THE DIST. COLLECTOR, PALAKKAD DATED 22.3.2000

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. No. 15172 OF 2000

Dated this the 13th day of November, 2007

JUDGMENT

Petitioner is challenging recovery proceedings initiated against her husband which initially led to his arrest. Petitioner's case is that fifth respondent has actually carried on the business in the name of her husband and in fact her husband has not carried on any business. Fifth respondent is reportedly dead. This Court issued an interim order dated 26.7.2006 directing the Commissioner to get an enquiry conducted by the police. Government Pleader reported that report of the police supports the case of the petitioner that her husband has not carried on the business and it is the fifth respondent who carried on the business. Petitioner's husband was stated to be a driver. Obviously benami business would have been carried on by the fifth respondent with the connivance of the department officials or in any case they were indifferent in the matter. In view of the finding in the police enquiry report, there is no scope for continuing recovery proceedings against the petitioner's husband. In the circumstances, recovery proceedings

against the petitioner's husband are quashed. However, fourth or fifth respondent is free to raise demand against the person who actually carried on the business and if he is dead, against his legal heirs, and recover the arrears in accordance with law.

O.P. is allowed as above.

(C.N. RAMACHANDRAN NAIR)
Judge